

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 392 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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STATE OF GUJARAT

Versus

AMBALAL PUNJABHAI PATEL

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Appearance:

MR DN PATEL, APP for State

MR ASHWIN PANDYA FOR MR. VIJAY PATEL, for  
Respondents-accused.

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CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 07/09/1999

ORAL JUDGEMENT

Rule. Mr. Ashwin Pandya, learned counsel appearing for Mr. Vijay Patel, learned counsel for the respondents-accused appears and waives service of Rule. With the consent of learned counsel appearing for the parties, this matter is taken up for final hearing today. The State has preferred present Cri. Revision Application against the impugned judgment and order dated 21.7.1998 passed in Sessions Case No. 99/96 by the

learned Addl. Sessions Judge, Sabarkantha at Modasa, on the ground that the learned Addl. Sessions Judge has erred in rejecting the application preferred by the

learned PP in the aforesaid Sessions Case pending before him in view of settled legal position.

Ld. APP Mr. Patel has submitted that Sessions Case No. 99/96 was pending before the learned Addl. Sessions Judge at Modasa for the alleged offence committed by a mob against the State machinery namely police and other officials. That mob was participating in a so-called public agitation which took place against the rise in electricity duty, surcharge etc. Mob was protesting mainly against the State Electricity Board and mob consisted about more than 2500 people out of which present respondents were caught as they were identified by some of the witnesses as persons present in that mob. They were, therefore, chargesheeted and were committed to the Court of Sessions as it was grave offence against the State and its property.

It has been submitted by learned APP Mr. Patel that the learned Addl. Sessions Judge ought to have granted application exh.3 for dropping prosecution against the respondents-accused considering the totality of the facts and circumstances, nature of alleged offence committed against the State vis-a-vis other relevant facts. Mr. Patel has placed reliance on a decision in the case of Sheo Nandan Paswan v/s State of Bihar & others, reported in AIR 1987 SC 877 . In that case before the Apex Court, the jurisdiction of the original court under sec.321 of the Cr.P.Code was under consideration vis-a-vis the other provisions of the Code. Learned APP has rightly submitted that the learned Addl. Sessions Judge was not bound to give consent as a matter of course and was legally authorised to reject such an application, but in that event, compelling reasons and circumstances must be available to the Court for rejecting such an application. Ld. APP has further submitted that application submitted by the ld. PP before the learned Addl. Sessions Judge was purely in good faith and that State Government also accorded its assent for such withdrawal. Learned District Magistrate was instructed accordingly and, therefore, the application placed before the learned Addl. Sessions Judge was not a mere decision of the learned PP but was the decision of the Government itself. It would be just and proper to reproduce relevant observations made in the aforesaid judgment by the Apex Court clarifying the legal position in this regard as under :-

" The scope of S.321 can be tested from

another angle and that with reference to S.320 which deals with "compounding of offences". Both these Sections occur in Chapter 24 under the heading " General Provisions as to Enquiries and Trials". Section 320(1) pertains to compounding of offences, in the table, which are not of a serious nature while S.320(2) pertains to offences of a slightly serious in nature but not constituting grave crimes. The offences in the table under S. 320(1) may be compounded by the persons mentioned in the third column of the table without the permission of the Court and those given in the table-II, under S.320(2) can be compounded only with the permission of the Court. Under sub-section (4)(a), when a person who would otherwise be competent to compound an offence under S.320, is under the age of 18 years or is an idiot or a lunatic, any person competent to contract on his behalf may, with the permission of the Court, compound such offence. Sub-sec.(4)(b) provides that when a person who would otherwise be competent to compound an offence under this Section is dead, the legal representative, as defined in the Code of Civil Procedure, of such person may, with the consent of the Court, compound such offence.

These two sub-sections use the expression

"with the permission of the Court" and "with the consent of the Court" which are more or less ejusdem generis. On a fair reading of the above-mentioned sub-sections it can be safely presumed that the Sections confer only a supervisory power on the Court in the matter of compounding of offences in the manner indicated therein, with this safeguard that the accused does not by unfair or deceitful means, secure a composition of the offence. Viewed thus I don't think that a plea can be successfully put forward that granting permission or giving consent under sub-section (4)(a) or (4)(b) for compounding of an offence, the Court is enjoined to make a serious detailed evaluation of the evidence or assessment of the case to be satisfied that the case would result in acquittal or conviction. It is necessary to bear in mind that an application for compounding of an offence can be made at any stage. Since S.321 finds a place in this chapter immediately after S.320, one will be justified in saying that it should take its colour from the immediately preceding Section and in holding that

this Section, which is a kindred to S.320, contemplates consent by the Court only in a supervisory manner and not essentially in an adjudicatory manner, the grant of consent not depending upon a detailed assessment of the weight or volume of evidence to see that degree of success at the end of the trial. All that is necessary for the Court to see is to ensure that the application for withdrawal has been properly made, after independent consideration, by the public prosecutor and in furtherance of public interest."

In my view, in view of clear legal position as enumerated above by the Apex Court in the case of Sheo Nandan Paswan (Supra), the learned Addl. Sessions Judge ought to have granted application exh.3 and allowed withdrawal of prosecution. Merely some persons have sustained injuries, that cannot be said to be a ground for rejecting such an application. If this logic is accepted, then it would go to the root and vitiate the privilege granted under S.321 and State cannot withdraw any complaint where one or more person is injured. Unless the court reaches to a conclusion that application under Sec.321 filed by the learned PP is not in good faith or is not in furtherance of public interest and that withdrawal of prosecution by State may affect adversely the ultimate interest of the society, the court should not reject the said application and the said application ought to have been granted by exercising powers conferred on it, in consonance with the intention of the legislature. In my view, therefore, the learned Addl. Sessions Judge has erred in rejecting the application exh.3 on irrelevant grounds ignoring the settled legal position and hence, it requires interference at the hands of this court.

For the reasons aforesaid, present Cri. Revision Application is allowed. The impugned order dated 21.7.1998 passed by the learned Addl. Sessions Judge, Sabarkantha at Modasa in Sessions Case No. 99/96 is hereby quashed and set aside. The application exh.3 seeking permission to withdraw prosecution against the accused persons, is hereby allowed and Sessions Case No.99/96 is hereby ordered to be terminated on withdrawal of prosecution by the complainant State.

Rule is made absolute. Yadi be sent to the Sessions Court concerned forthwith so that necessary orders can be passed by the learned Sessions Judge concerned in this regard. No costs.

